

**UNITED STATES OF AMERICA  
BEFORE THE NATIONAL LABOR RELATIONS BOARD  
REGION 16**

**Houston, Texas**

**QUIETFLEX MANUFACTURING  
COMPANY, L.P.**

**Employer**

**and**

**Case No. 16-RC-10487**

**SHEET METAL WORKERS  
INTERNATIONAL ASSOCIATION,  
AFL-CIO**

**Petitioner**

**REGIONAL DIRECTOR'S DECISION AND DIRECTION OF ELECTION**

The Employer, Quietflex Manufacturing, manufactures heating, ventilation and air conditioning ducts. The Employer operates a facility at 4518 Brittmore in Houston, Texas.

The Petitioner, Sheet Metal Workers International Association, filed a petition, amended at the hearing, seeking to represent a unit of employees, including all full-time production and maintenance employees, shipping employees, quality control employees, project maintenance employees, and parts coordinator employees employed at the Employer's facility located at 4518 Brittmore in Houston, Texas and excluding all other employees, leadmen/crew chiefs, contract employees, managerial employees, logistics employees, buyer and scheduler employees, accounts payable employees, M.I.S. employees, guards and supervisors as defined by the Act. The parties have no prior bargaining history.

On February 20, 2003, a hearing officer of the National Labor Relations Board conducted a hearing and both parties filed briefs with me.

## **1. ISSUES**

The parties advanced two issues for my determination. The first is whether the crew chiefs are to be included in the bargaining unit. Petitioner seeks to exclude the crew chiefs, claiming they are supervisors as defined in Section 2(11) of the Act. The Employer contends that the crew chiefs would properly be included in the bargaining unit.

The second issue concerns crew chief Tuoc Nguyen. Petitioner contends that even if the crew chiefs are included in the bargaining unit, crew chief Tuoc Nguyen should be excluded, as he does not share a sufficient community of interest with the other employees in the bargaining unit because he is a salaried, exempt employee and the employees in the requested bargaining unit are hourly and non-exempt employees.

## **2. DETERMINATION**

I have considered the evidence and arguments presented by both parties. As discussed below, I have determined that the Petitioner failed to prove that crew chiefs are statutory supervisors under Section 2(11) of the Act. I also conclude they share a community of interest with the other employees in the petitioned-for unit and should be included in the bargaining unit. I further conclude that crew chief Tuoc Nguyen shares a sufficient community of interest with the bargaining unit employees and should be included in the unit found appropriate in this case.

## **3. FACTS**

### **A. EMPLOYER'S WORKFORCE**

The Employer employs about 215 employees at its Houston facility. The facility operates on a five day a week, 24-hour a day basis, with the employees working three shifts. Employees are employed in the following departments: core and jacket, duct, mat line, prep, die cut (or lamination), glass-side maintenance and duct-side maintenance.

### **B. EMPLOYER'S MANAGERIAL STRUCTURE**

The Employer's facility is headed by President and CEO William Alexander ("Dan") Daniel. Glass Plant Superintendent Mark Kiddle, Vice President Kurt Wangenheim and Vice President of Marketing Rich Young report directly to Daniel. In addition, Manager of Information Systems Michael Schneider and Human Resource Manager Eliu Pineda also report directly to Daniel.

Prep Supervisor John Brown, Maintenance Supervisor Ly Nguyen, Vice President of Engineering Mike Mohr, Maintenance Supervisor An Ha, Logistics Scheduler Matt Simon and Warehouse Supervisor Michael Colonna report directly to Mark Kiddle. Quality Control Supervisor David Sandoval reports quality control matters concerning glass to Kiddle.

Duct Supervisor Santiago Rodriguez, Core and Jacket Supervisor Can Le, Maintenance Supervisor Duc La, Logistics Scheduler Paul Chan, and Account Payable Manager Charlie Bapst report directly to Kurt Wangenheim. Quality Control Supervisor David Sandoval reports quality control matters concerning duct to Wangenheim.

Charlie Bapst, Rick Young, Michael Schneider, Matt Simon and Paul Chan do not supervise any employees.

Ly Nguyen supervises the three shifts of Mat Line Department employees, and crew chiefs (Tuoc Nguyen, Xuan Tran, Dung Nguyen and David Garcia.) John Brown supervises the three shifts of Prep Department employees, including crew chiefs (Goodie Demyron, Norberto Zatarian and Richard Garcia.) Duct Supervisor Santiago Rodriguez supervises Duct crew chiefs Carlos Quintor, Hector Umanzor and Irvino Robles as well as Shipping Department crew chiefs Jorge Gonzalez and Vicente Herrera. Core and Jacket supervisor Can Le supervises crew chiefs Tran Nguyen, Mike Diep and Huy Nguyen and Glass Plant Superintendent Mike Kiddle supervises Die Cut and Laminating crew chief Tony Truong. The Slitting Department does not have a crew chief. Can Le supervises the Slitting Department's one employee. Likewise, the Film Department does not employ any crew chiefs and Santiago Rodriguez supervises its two employees.

The Employer's supervisors are responsible for three shifts of employees. Because of this, many of the supervisors do not work regular shifts. Prep Supervisor Brown's beginning work time fluctuates and he may begin work at 5 a.m., 10 a.m. or 5 p.m. Maintenance Supervisor Ly Nguyen works on the first and second shifts. Vice President of Engineering Mohr works from about 6:30 or 7 a.m. to about 4 p.m. Maintenance Supervisor An Ha works from about 6 a.m. until about 4 or 5 p.m. Logistics Scheduler Matt Simon and Quality Control Supervisor David Sandoval generally work first shift (which begins between 5 a.m. and 7 a.m. and ends eight hours later). Duct Supervisor Santiago Rodriguez and Core Supervisor Can Le tend to begin work at 7 a.m., but may come in later to supervise the second and third shifts. Maintenance Supervisor Duc La works from 6 a.m. to 3 p.m.

The parties agreed that the above-named individuals possess authority as defined in Section 2(11) of the Act and are supervisors and/or managers as defined in the Act, and I so find.

C. **RANK AND FILE EMPLOYEE AND CREW CHIEFS' DUTIES**

The Employer employs sixteen crew chiefs at its facility. Generally, crew chiefs perform similar job duties as rank and file employees. Crew chiefs, with the exception of Tuoc Nguyen, punch time clocks like rank and file employees. Crew chiefs have the additional responsibility of filling out daily production records which detail the day's production and other matters such as any employee absences or instances of tardiness, vacations, etc. and report any production problems including problems with the machines and material.

Crew chiefs and rank and file employees attend daily safety and production meetings, which are conducted by a supervisor, crew chief or a rank and file employee, depending on the shift and the department. Crew chiefs do not assign work because production is determined by the schedule.

Crew chiefs lack the authority to hire or fire employees or recommend such action. They do not grant time off, issue discipline, adjust grievances, approve vacation, grant permission to leave early or to arrive late, approve absences, make promotion decisions or effectively recommend such decisions. Crew chiefs cannot effectively recommend transfers or discipline, effectively recommend layoffs or recall of employees, evaluate employee performance, pledge credit or reward employees. If an employee fails to show up at work or arrives impaired, crew chiefs inform the supervisor and take no additional action. If an employee is going to be absent, he or she calls the supervisor or the Human Resources office, not the crew chief. Although the record reflects that crew chief Robles may send an ill employee home without calling a supervisor, the record also demonstrates that other crew chiefs will call a supervisor before making such a decision.

1. **General Pay Structure for Rank and File Employees**

Rank and file employees earn between \$12.50 per hour to \$16 per hour, depending on the department. The standard pay rate for duct and core side employees is \$7 per hour or incentive, whichever is greater. The average hourly pay for prep and mat employees is \$12.50 per hour, while the average hourly pay is \$12.00 per hour for die cut employees.

Employee wages increase with incentive pay. Including incentive pay, the average wage for duct employees increases to about \$14.54 per hour, while the core and jacket employees pay increases to about \$16.00 per hour. Similarly, with incentive, the mat line employees pay increases to about \$13.50 to \$13.75 per hour and the prep employees pay increases to about \$13.50 per hour. The glass-side maintenance employees' pay is about \$17 per hour including incentive, while duct-side maintenance

employees earn about \$15 per hour with incentive. Some high producing rank and file employees earn more than the crew chiefs because of incentive pay.

## **2. Shipping Department**

Crew chiefs Gonzalez and Herrera work in the Employer's shipping department. Gonzalez earns \$15 per hour and Herrera earns \$14.50 per hour. Neither crew chief receives incentive pay, while the rank and file employees are eligible for incentive pay. Five employees (plus crew chief Gonzalez) work the first shift and another five employees (plus Herrera) work the second shift. The department does not work the third shift.

The shipping department employees perform two functions. One group of employees stretch wrap bundles of product by pulling 25-foot sections of flex duct down and bundling it into 25 pieces, stack the bundles and then stretch wrap them. Other employees pull production from the inventory using a pick list. One employee operates the forklift while the other employee puts the product in the truck. These employees will take turns operating the forklift.

Like rank and file employees, crew chiefs perform the stretch wrap, loading and pulling production tasks. In addition, the crew chiefs direct vendor trucks to an open door for pickup. In performing their duties, the crew chiefs follow a self-explanatory schedule that is created by the logistics scheduler.

## **3. Core and Jacket Department**

Crew Chiefs Tran Nguyen, Mike Diep and Huy Nguyen each receive \$7 per hour or incentive (whichever is greater) plus a premium of \$85 per week. The incentive is based upon the number of pieces produced by the employee or crew chief. Rank and file core and jacket employees receive similar compensation (\$7 per hour or incentive), but do not receive the \$85 per week premium. Core and jacket employees average about \$16 per hour, including incentive and, in the past, the leading employee performers have earned more than the crew chiefs.

The department employs 20 to 25 employees on the first and second shifts and six to seven employees on the third shift. The department produces twelve different sizes of core and eighteen different sizes of jacket.

The daily production in the department is routine. Crew chiefs receive a self-explanatory production schedule that dictates the number of core to be produced during the shift and details the machine on which it is to be produced. The department contains thirteen individual core machines and seven individual jacket machines. One employee

operates each machine. The crew chiefs operate the same machinery as the other department employees.

#### **4. Duct Department**

Duct department crew chiefs Carlos Quintor and Hector Umanzor currently earn \$14.50 per hour, with no incentive pay. Crew chief Irvino Robles, who became a crew chief in early February 2003, earns \$14 per hour, with no incentive pay. The Employer employs 15 employees per shift in the duct department and the leading employee producers earn approximately \$17 per hour because of incentive pay. The employees work three shifts. Quintor works the first shift, Umanzor works the second shift and Robles works the third shift.

Logistics Scheduler Chan develops the production schedules for the duct department. The schedule details the size of the duct and the materials to be used to manufacture the duct. While the schedule is self-explanatory, it changes on a daily basis because the department does not run the same amount or same size of duct every day.

Employees make and bag the duct and place the bagged product on a conveyor. Besides the crew chief position, the other jobs in the department are forklift operator, machine operator, bagging and maintenance. The crew chiefs walk along the production lines, removing the bagged product and putting it in a rack. When the rack becomes full, the crew chiefs place an inventory tag on the rack and account for the production by making a notation on a clipboard and the forklift operator takes the product away. In addition, the crew chiefs call maintenance when necessary and count the material to be warehoused. The crew chiefs also record each employee's production along with any absences, vacations, new employees, accidents or if any employees went home due to illness. The record reflects that crew chief Robles once asked three employees about their production, but did not threaten them with discipline if their production did not increase.

Employees in the department are assigned to work certain machines on a rotating basis. The Employer has followed this policy to equalize its employees' pay because some jobs pay more than others. At the beginning of his shift, crew chief Robles rotates the assignment of employees in accordance with this policy. Before making the day's assignments, Robles discusses the machine assignments with the employees and the employees need to agree.

## 5. Mat Line Department

The mat line department consists of mat and edge coat areas. The production comes off the mat line and then is sent to edge coat. Approximately 15 employees per shift work in the mat area and three employees per shift (including the crew chief) work in the edge coat area.

Senior crew chief Tuoc Nguyen (first shift) and crew chiefs Xuan Tran (second shift) and Dung Nguyen (third shift) work in the mat line department. Crew chief David Garcia works the first shift in the edge coat area.

Senior crew chief Tuoc Nguyen (former supervisor and technical adviser) earns \$2083.34 semi-monthly with no incentive. Crew chief Tran earns \$19 per hour plus a monthly bonus, while Dung Nguyen earns \$20 per hour plus a monthly bonus. Edge coat crew chief Garcia earns \$16 per hour plus a monthly bonus. The monthly bonus ranges from 0% to 15% of each employee's hourly rate and is based upon monthly department-wide safety, quality and production goals. Rank and file employees receive the same monthly bonus as crew chiefs Tran, Dung Nguyen and Garcia.

The Employer employs three employees in the edge coat area of the mat line department. Two of the employees work the input side and the other works the output side. The edge coat crew chief operates the roll-up (also known as a dyken) and performs the packaging.

The mat line crew chiefs physically set the machine settings following "recipes" from specification sheets produced by the engineering department. The crew chiefs physically adjust the machine for the product mix and adjust the temperature to account for the plant's temperature. Crew chiefs are responsible for the overall settings of the machines and must ensure that all the machine parts are in sync with each other. The crew chiefs cover for employees who go on break and act as relief operators.

Crew Chief Tuoc Nguyen trains employees how to operate the machines and maintains the machine for production. He spends about six hours of his workday on the manufacturing floor, making sure the machines run correctly, making sure the weight is correct, adjusting the resin machine, the machine speed, and the oven temperature. He follows instruction found in a manual to set the machine for different sizes of ducts. He spends the remaining one to one and one-half hours filling out production reports.

Crew Chief Tuoc Nguyen does not assign jobs to employees because employees are hired for specific positions. He does not have the authority to issue discipline. He informs a supervisor before allowing an ill employee to go home and would refer poor

performing employees to the supervisor. He does not grant overtime without discussing the matter with a supervisor.

#### **6. Prep Department**

The prep department crew chiefs are Goodie Demyron (first shift), Norberto Zatarian (second shift) and Richard Garcia (third shift). They earn \$15 per hour plus a monthly bonus, which is based upon monthly safety, quality and production goals. There are five employees (including the crew chief) who work each shift. The rank and file employees in the prep department receive the same bonus as the crew chiefs.

Like the mat department, the prep department employees work as a team. The prep process begins with the chopping of a long stringy fiber by a guillotine and rotary cutters. After the material is chopped, it is bailed. A forklift operator takes the material to the guillotine and the same forklift operator removes the bailed material. One or two employees who operate the bailers. The crew chief will fill in for employees during breaks in order to keep the machines running.

#### **7. Die Cut Department**

Tony Truong is the crew chief in the die cut department. The department's seven to eight employees (including the crew chief) work only the first shift. Truong earns \$16 per hour plus the monthly bonus based upon monthly safety, quality and production goals. The rank and file die cut employees receive the same bonus as Truong.

The die cut process involves the processing of four to five layers of material that is put into a hydraulic press. Two or three employees (including the crew chief) operate the press and an employee (who may also run the press) removes the material from the press and places it in a box.

#### **4. ANALYSIS**

The crew chiefs are not statutory supervisors. It is well settled that the party who seeks to exclude employees on the basis of supervisory status bears the burden of proving that status. *NLRB v. Kentucky River Community Health Care, Inc.*, 532 U.S. 706 (2000); *Custom Mattress*, 327 NLRB 111 (1998). In order to meet this burden, Petitioner must show by a preponderance of the evidence that the crew chiefs engage in activities described by Section 2(11) of the Act. *Star Trek: The Experience*, 334 NLRB No. 29, slip op. at 6 (2001).

Section 2(11) of the Act defines a supervisor as:



Any individual having authority, in the interest of the employer, to hire, transfer, layoff, recall, promote, discharge, reward, or discipline other employees, or responsibly to direct them, or to adjust their grievances, or effectively to recommend such action, if in connection with the foregoing the exercise of such authority is not of a merely routine or clerical nature, but requires the use of independent judgment.

When determining whether an individual is a supervisor under Section 2(11) of the Act, the individual must possess only one of the twelve criteria listed or the authority to effectively recommend such action. *Ohio Power Co. v. NLRB*, 176 F.2d 385 (6th Cir. 1949), *cert. denied* 338 U.S. 899 (1949). The exercise of that authority must involve the use of independent judgment. *Harborside Healthcare, Inc.*, 330 NLRB 1334 (2000).

The record shows no evidence of the exercise of the supervisory indicia specified in Section 2(11) of the Act, nor does it show any evidence of the crew chiefs responsibly directing employee work.

Although there is evidence that Robles assigns employees to certain machines at the start of each shift, such assignments are routine in nature and do not show the exercise of independent judgment. *King Broadcasting Co., d/b/a KGW-TV*, 329 NLRB 378 (1999); *Providence Hospital*, 320 NLRB 717 (1996); *Ohio Masonic Home*, 295 NLRB 390 (1989); *McCullough Environmental Services, Inc.*, 306 NLRB 565 (1992). Additionally, Robles' limited authority to send an ill employee home is insufficient to transform him into a statutory supervisor. *McCullough Environmental Services, Inc.*, 306 NLRB at 566, fn. 5.; *Chrome Deposit Corp.*, 323 NLRB 961 (1997); *North Shore Weeklies*, 317 NLRB 1128 (1995). Similarly, crew chief Tuoc Nguyen's checking the weight of the product to ensure its accuracy does not lead to a finding that he is a supervisor as defined in the Act. *Brown and Root, Inc.*, 314 NLRB 19, fn. 6 (1994).

I also find that the crew chiefs, including Tuoc Nguyen, share a sufficient community of interest with the employees in the proposed bargaining unit. The factors to be considered when determining whether there is a sufficient community of interest include common supervision, nature of employee skills and functions, interchange of employees and contact among employees, work situs, general working conditions and fringe benefits. *Kalamazoo Paper Box Corp.*, 136 NLRB 134, 137 (1962). None of these factors, individually, is determinative; all are weighed in deciding whether a sufficient community of interest exists so as to include separate, identifiable groups of employees in an appropriate unit.

Applying these principles, the crew chiefs, including Tuoc Nguyen share a sufficient community of interest with the rank and file employees. The crew chiefs and employees share common supervision, work in the same facility, share the same working conditions and enjoy similar benefits and pay. The shipping department, core and

jacket, mat (edge coat) and die cut crew chiefs perform the same tasks as the departmental employees. The duct, mat and prep department crew chiefs' work is functionally integrated with the work of the other departmental employees.

While Tuoc Nguyen is a salaried, exempt employee who earns more money than the other employees and crew chiefs, this difference is insufficient to exclude him from the bargaining unit. *Palmer Mfg. Corp.*, 105 NLRB 812 (1953); *Four Winds Service*, 325 NLRB 632 (1998).

In brief and at hearing, Petitioner introduced a Decision and Direction of Election in Case No. 16-RC-10105 that issued on April 4, 2000. While the previous Decision and Direction of Election excluded leadmen from the bargaining unit, the Regional Director made no determination concerning whether the leadmen were statutory supervisors under Section 2(11) of the Act. Moreover, the record evidence shows that some of the leadmen duties are now being performed by crew chiefs, that crew chiefs are now assigned to departments that did not have leadmen in 2000 and that duct crew chiefs perform the same job tasks as the duct floater classification (which was included in the appropriate bargaining unit in 2000). For these reasons, I do not rely upon the prior Decision and Direction of Election in making my determination concerning the appropriate bargaining unit.

## **5. CONCLUSIONS AND FINDINGS**

Based upon the entire record in this matter and in accordance with the discussion above, I conclude and find as follows:

1. The hearing officer's rulings made at the hearing are free from prejudicial error and are affirmed.
2. The parties stipulated, and I find, that the Employer, a Texas corporation, is engaged in the manufacture of heating, ventilation and air conditioning ducts. In the past twelve months, the Employer has sold and shipped from its Houston, Texas facility, goods valued in excess of \$50,000 directly to points outside of the State of Texas. Based on the foregoing, I find the Employer is engaged in commerce within the meaning of the Act and it will effectuate the purposes of the Act to assert jurisdiction in this case.
3. The Petitioner claims to represent certain employees of the Employer.
4. The parties stipulated to the petitioner's status as a labor organization.
5. A question affecting commerce exists concerning the representation of certain employees of the Employer within the meaning of Section 9(c)(1) and Section 2(6) and (7) of the Act.

6. The following employees of the Employer constitute a unit appropriate for the purpose of collective bargaining within the meaning of Section 9(b) of the Act:

**INCLUDED:** All full-time production and maintenance employees, crew chiefs, shipping employees, quality control employees, project maintenance employees, and parts coordinator employees employed at the Employer's facility located at 4518 Brittmore in Houston, Texas.

**EXCLUDED:** All other employees, contract employees, managerial employees, logistics employees, buyer and scheduler employees, accounts payable employees, M.I.S. employees, guards and supervisors as defined by the Act.

**6. DIRECTION OF ELECTION**

The National Labor Relations Board will conduct a secret ballot election among the employees in the unit found appropriate above. The employees will vote whether or not they wish to be represented for purposes of collective bargaining by the Sheet Metal Workers' International Association, AFL-CIO.

The date, time, and place of the election will be specified in the notice of election that the Board's Regional Office will issue subsequent to this Decision.

**A. Voting Eligibility**

Eligible to vote in the election are those in the unit who were employed during the payroll period ending immediately before the date of this Decision, including employees who did not work during that period because they were ill, on vacation, or temporarily laid off. Employees engaged in any economic strike, who have retained their status as strikers and who have not been permanently replaced are also eligible to vote. In addition, in an economic strike which commenced less than 12 months before the election date, employees engaged in such strike who have retained their status as strikers but who have been permanently replaced, as well as their replacements are eligible to vote. Unit employees in the military services of the United States may vote if they appear in person at the polls.

Ineligible to vote are (1) employees who have quit or been discharged for cause since the designated payroll period; (2) striking employees who have been discharged for cause since the strike began and who have not been rehired or reinstated before the election date; and (3) employees who are engaged in an economic strike that began more than 12 months before the election.

**B. Employer to Submit List of Eligible Voters**

To ensure that all eligible voters may have the opportunity to be informed of the issues in the exercise of their statutory right to vote, all parties to the election should have access to a list of voters and their addresses, which may be used to communicate with them. *Excelsior Underwear, Inc.*, 156 NLRB 1236 (1966); *NLRB v. Wyman-Gordon Company*, 394 U.S. 759 (1969).

Accordingly, it is hereby directed that within 7 days of the date of this Decision, the Employer must submit to the Houston Resident Office an election eligibility list, containing the full names and addresses of all the eligible voters. *North Macon Health Care Facility*, 315 NLRB 359, 361 (1994). This list must be of sufficiently large type to be clearly legible. To speed both preliminary checking and the voting process, the names on the list should be alphabetized (overall or by department, etc.). Upon receipt of the list, I will make it available to all parties to the election.

To be timely filed, the list must be received in the Houston Resident Office, Mickey Leland Federal Building, Suite 1545, 1919 Smith Street, Houston, Texas 76102 on or before March 14, 2003. No extension of time to file this list will be granted except in extraordinary circumstances, nor will the filing of a request for review affect the requirement to file this list. Failure to comply with this requirement will be grounds for setting aside the election whenever proper objections are filed. The list may be submitted by facsimile transmission at (713) 209-4890. Since the list will be made available to all parties to the election, please furnish a total of **two** copies, unless the list is submitted by facsimile, in which case no copies need be submitted. If you have any questions, please contact the Resident Office.

### **C. Notice of Posting Obligations**

According to Section 103.20 of the Board's Rules and Regulations, the Employer must post the Notices to Election provided by the Board in areas conspicuous to potential voters for a minimum of 3 working days prior to the date of the election. Failure to follow the posting requirement may result in additional litigation if proper objections to the election are filed. Section 103.20(c) requires an employer to notify the Board at least 5 full working days prior to 12:01 a.m. of the day of the election if it has not received copies of the election notice. *Club Demonstration Services*, 317 NLRB 349 (1995). Failure to do so estops employers from filing objections based on nonposting of the election notice.

## **7. RIGHT TO REQUEST REVIEW**

Under the provisions of Section 102.67 of the Board's Rules and Regulations, a request for review of this Decision may be filed with the National Labor Relations Board, addressed to the Executive Secretary, 1099 14th Street, N.W., Washington, D.C. 20570-

0001. This request must be received by the Board in Washington by 5:00 p.m., EST on March 21, 2003. The request may **not** be filed by facsimile.

**DATED** at Fort Worth, Texas, this 7<sup>th</sup> day of March 2003.

*/s/ Curtis A. Wells*

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